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10/642,716	08/18/2003	Stephen G. Kimmet	1-16294	4389
7590	08/17/2006		EXAMINER	
MARSHALL & MELHORN, LLC 8TH FLOOR FOUR SEAGATE TOLEDO, OH 43604				PUROL, DAVID M
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/642,716
Filing Date: August 18, 2003
Appellant(s): KIMMET, STEPHEN G.

Stephen G. Kimmet
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 17, 2006 appealing from the Office action mailed October 20, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,811,489	Thun et al.	5-1974
4,431,044	Bruneau	2-1984
5,598,667	Dykes	2-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 5,11 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. These claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

It is not known the structure and the software/hardware interface which comprises the computer controlled display.

Claims 1,2,6-9,12,13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bruneau. Bruneau discloses the claimed folding panel assembly including a plurality of folding panels 6 hingedly mounted to vertically-oriented frames, first and second locking bars 30,31. It is noted that the claims have been amended to recite that the folding panel assembly has an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening, and that there are only vertically-oriented frames. However, it is a well settled issue that to eliminate an element together with its function would have been obvious to one of ordinary skill in the art.

Claims 4,10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bruneau in view of Dykes. While Bruneau does not set forth a decorative or descriptive panel, Dykes discloses a folding panel assembly comprising decorative or descriptive

panels 30a-d, wherein, to incorporate this teaching into the folding panel assembly of Bruneau for the purpose of aesthetics would have been obvious to one of ordinary skill in the art.

Claim 14 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bruneau in view of Thun et al. While Bruneau does not set forth the use of a spring, Thun et al disclose a folding panel assembly 20,21 comprising spring 58 biased hinges 29, wherein, to incorporate this teaching into the folding panel assembly of Bruneau for the purpose of facilitating the movement of the panels would have been obvious to one of ordinary skill in the art.

(10) Response to Argument

The appellant argues that in regard to the control of the computer controlled display panels of claims 5 and 11, it is asserted that one skilled in the art of computer display control knows how to make and/or use the claimed computer display panel and one skilled in the art of the control of computer displays knows of at least hundreds of ways to provide control for computer controlled displays, because the field of computer controlled displays is a very mature field of art going back over 70 years; see, for example, the Evidence Appendix for Exhibit A. This is not convincing for there is nothing to indicate that the claimed computer controlled display encompasses the example having been referenced to Exhibit A. Furthermore, the referenced Exhibit A fails to set forth any disclosure directed to the necessary software and/or hardware interface associated with the computer of which permits the controlling of the claimed computer controlled display. The appellant argues that it is their position that the

computer controlled display panels of claims 5 and 11 are similar to applying posters and physical items to the folding panels since the means of applying posters and physical items have been known for many years and there are also literally at least hundreds of ways to apply these items. This argument is more specific than the claims and thus not directed thereto inasmuch as the claims are not reciting the application of posters and physical items to the folding panels.

The appellant traverses the rejection of the claims based upon the Bruneau reference and asserts that independent claim 1 and dependent claims 2 and 6, which directly depend from claim 1, include at least the limitations of only vertically-oriented frames, a plurality of folding panels, wherein a first panel is mounted to the first vertically-oriented frame and each successive panel is supported solely by its preceding panel, and the folding panel assembly having an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening and nowhere in Bruneau can it be found where at least these limitations (and, therefore, the structure of claims 1, 2, and 6) are taught or suggested and instead the appellant finds that the Bruneau apparatus requires that each successive panel 6 is not supported solely by its preceding panel but is supported by horizontal elements (i.e., upper and lower runners 1,2) (see, for example, Fig. 1). In addition, the appellant states that the Bruneau apparatus further requires the upper and lower runners 1,2 to cooperate with horizontal brackets 40,41 that are "situated as close as possible to the lintel and ground in order to resist the insertion of a lever toward the interior panel 6" and these elements 40,41 are contrary to the claimed invention which specifically claims

an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening. This is not convincing for the panels 6 of Bruneau, the first of which is mounted to a vertically oriented frame 3,4, are supported solely by each of its preceding panel independent of the upper and lower runners 1,2 along with the horizontal brackets 40,41. Note figure 1 of Bruneau which illustrates this claimed feature. The appellant's discussion of MPEP 2144.04 is acknowledged and it is clear that an omission of an element and its function is obvious if the function of the element is not desired. In the instant case the elimination of the elements 40,41 of Bruneau together with their function of locking would have been obvious to one of ordinary skill in the art. The claim recitation setting forth "the folding panel assembly having an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening" merely precludes the presence of the brackets 40,41 which are secured by the locking elements 8,9 of Bruneau per se and has no bearing on the presence of the runners 1,2 inasmuch as the claim language "an absence of any elements that would unite the folding panels to horizontal members" refers to the elements that unite the folding panels per se. The runners 1,2 of Bruneau do not unite the folding panels but rather are part of the chassis or frame of the shutter. The appellant argues that there is no suggestion of motivation in Bruneau to provide for the function of privacy. This argument is more specific than the claims and thus not directed thereto inasmuch as the claims do not refer to privacy but rather to blocking an opening. The folding panel assembly of Bruneau blocks an opening, notwithstanding the function of privacy is a readily apparent

feature of a shutter. Appellant's argument regarding appealed claims 7-9,12, and 13 is acknowledged but it is noted that they are a reiteration of the arguments presented for appealed claims 1,2, and 6 and as such are not being addressed herein.

The appellant states that nowhere in the 35 U.S.C. 103(a) rejection of claims 4 and 10 based on Bruneau in view of Dykes does the Examiner specifically address the limitations of claims 4 and 10 that the decorative or descriptive panels are removably attached to the folding panels and after studying the Dykes reference the appellant can find nowhere in Dykes where Dykes teaches removably attached panels and for at least this reason claims 4 and 10 are patentable over Bruneau in view of Dykes. This is not convincing for Dykes discloses that the decorative or descriptive panel covers 30a-d are slidably mounted within edge strips 32 or can be flexed or bent in an outwardly concave configuration to insert the margins of the panel covers there into, this is a removable attachment. The appellant argues that the removability of the decorative and descriptive panels provide a function that neither Bruneau and/or Dykes provides, that is the function to have logos, advertisements, pictures, "white board" finish, symbols, cork board, pictures of art of all forms, likenesses of celebrities, figures of cars and other entertainment objects and characters" so as to personalize the door. This argument is more specific than the claims and thus not directed thereto inasmuch as the claims do not recite the feature of logos, advertisements, pictures, white board finish, symbols, cork board, pictures of art of all forms, likenesses of celebrities, figures of cars and other entertainment objects and characters. The appellant further argues that claims 4 and 10 of the present application are patentable over Bruneau in view of

Dykes as the inventions defined thereby are not suggested within either Bruneau or Dykes nor is there any suggestion or motivation to modify or combine these references in order to teach or suggest the claimed limitations. This is not convincing for both the references of Bruneau and Dykes are from the appellant's field of endeavour, that of hinged panel closures, and as such the appellant is presumed to have full knowledge of the prior art in their respective field of endeavour.

The appellant states that independent claim 7, from which claim 14 depends, includes at least the limitations of a first plurality of folding panels and a second plurality of folding panels where each successive panel is supported solely by its preceding panel whereas Bruneau illustrates in Fig. 1 only one panel 6 on the left side of Fig. 1 and the Examiner fails to address these limitations of claim 14 and appellant finds that neither Bruneau nor Thun include these limitations. This is not convincing for Bruneau clearly sets forth that the shutter comprises two series of panels articulated with respect to each other and as such the appellants contention that Bruneau illustrates only one panel 6 on the left side of figure 1 is unfounded. The appellant further states that after studying the Thun reference the appellant finds that the spring 58 and biased hinges 29 of Thun are only disposed between panels 25 and 26 and not between a first panel and a vertical frame as required by claim 13. The feature of a hinge being disposed between a first panel and a vertical frame is disclosed by Bruneau. The reference to Thun is relied upon for the teaching of a spring 58 biased hinge 29, a common attribute for folding panels where it is desired to have the function of biasing the panels to a predetermined positioned. Inasmuch as the both the references to Bruneau and Thun et

al are from the appellant's field of endeavour, that of hinged panel closures, the appellant is presumed to have full knowledge of the prior art in their respective field of endeavour.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

David P. Puro
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August 15, 2006